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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 396.

C. S. DONAHOO, (Plaintiff) *Petitioner,*

vs.

GUY A. THOMPSON, Trustee of the MISSOURI PACIFIC RAILROAD COMPANY, a Corporation, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THOS. T. RAILEY,
HAROLD L. HARVEY,
Missouri Pacific Building,
St. Louis 3, Missouri,

HILARY A. BUSH,
FRED A. MURDOCK,
Bryant Building,
Kansas City 6, Missouri,
Attorneys for Respondent.

E. L. MENDENHALL, INC., 924 WYANDOTTE, KANSAS CITY, MO., HARRISON 1-3030

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BRIEF OF RESPONDENT IN OPPOSITION.

OPINION BELOW.

The opinion of the Supreme Court of Missouri (App. A of Petition) is reported at 291 S. W. 2d 70.

JURISDICTION.

Respondents submits that this court should not assume jurisdiction for the following reasons: (1) No federal question is involved, and (2) prior decisions of the United States Supreme Court have fully and uniformly settled the matters sought to be reviewed.

QUESTION PRESENTED.

We submit that each of the "Questions Presented for Review" in petitioner's petition for a writ improperly states the issue by not limiting the questions to cases in which the remedy pursued is a common law action for breach of contract. A proper question could be phrased as follows:

Whether or not in a common law action for breach of contract in a state court, in which plaintiff alleges he was discharged by a railroad in violation of the terms of a collective bargaining agreement entered into between such railroad and plaintiff's union pursuant to the provisions of the Railway Labor Act, plaintiff can recover when the applicable state law bars such a recovery.

STATUTES INVOLVED.

Petitioner claims that the Railway Labor Act (Title 45, Ch. 8, Sec. 151 *et seq.*, U. S. C. A.) is involved. Respondent denies that this or any other federal statute is involved. Whatever rights petitioner has arose out of his personal contractual relations with respondent and not by virtue of any federal statute.

RESPONDENT'S STATEMENT.

This suit was commenced by the filing of a petition in the state court of Missouri asking damages for an alleged breach of petitioner's employment contract.

The petition alleged that plaintiff was an employee of respondent railroad and that "as a part of his contract of employment," there was a union contract (Schedule of Wages Conductors) entered into between the railroad and

petitioner's union in Missouri pursuant to the provisions of the Railway Labor Act; and that he had been discharged in violation of his rights under said union contract and was thereby damaged.

Respondent railroad defended on the ground (among others) that since petitioner was personally employed in Arkansas, his employment contract was an Arkansas contract and that the applicable law of Arkansas governed his rights thereunder; and that when the law of Arkansas was applied to the provision of the union contract relating to discharge, that provision was unilateral and void and petitioner could not recover.

After trial and judgment for plaintiff, the case was appealed to the Supreme Court of Missouri. In that court petitioner argued that the law of Arkansas was not applicable; that the validity of the union contract should have been ruled under the federal law and not the law of Arkansas because it was entered into pursuant to the provisions of the Railway Labor Act.

The Supreme Court of Missouri held (see opinion Appendix 1 to Application for Writ) that the Railway Labor Act did not create any personal causes of action; that petitioner was employed in Arkansas; that the Arkansas law governed petitioner's rights under his contract; and that under the facts and the Arkansas law, petitioner could not recover. The Supreme Court of Missouri reversed the case outright and thereafter this application for a writ was filed.

ARGUMENT.

I. No Federal Question Is Involved.

A. Petitioner abandoned any rights he might have had under the Railway Labor Act by choosing to bring a common law action in a state court for breach of contract.

When petitioner was discharged, he chose his remedy. He could have taken the position that his discharge was illegal and pursued the remedy granted him by the Railway Labor Act, namely, an appeal to the Railway Adjustment Board seeking reinstatement and pay for time lost. However, he did not choose to avail himself of this remedy. Instead he chose to accept his discharge as an accomplished fact (thus ceasing to be an employee) and to bring a common law action in a state court for damages arising out of an alleged breach of his personal contract of employment.

He chose to pursue a remedy wholly dependent on state law, and voluntarily gave up any rights or privileges which might have been his had he pursued the remedy provided in the Railway Labor Act.

Under the decisions of the United States Supreme Court, the action which he decided to bring and did bring is a common law action and is governed by the applicable law of the states.

In *Moore* v. *Illinois Cent. R. Co.*, 312 U. S. 630, 85 L. Ed. 1089, 61 S. Ct. 754, decided on March 31, 1941, this Court had before it a very similar fact situation. Plaintiff in the *Moore* case was employed in the state of Mississippi by a railroad and was discharged in that state. Mr.

Moore, as did this petitioner, chose to ignore his remedy under the Railway Labor Act and filed a suit for breach of contract in the state court of Mississippi. The union of which he was a member had negotiated a contract with the railroad under the provisions of the Railway Labor Act and Mr. Moore was individually employed by an oral contract. The railroad defended on the ground that the personal contract of employment, being oral, brought the action within the Mississippi three-year statute of limitations and that the action was therefore barred. The trial court sustained this defense and dismissed the petition. On appeal the Mississippi Supreme Court held that the six-year statute of Mississippi applied because the union contract was in writing, and reversed and remanded the cause. Thereafter, plaintiff amended his petition to ask for more than $3,000 and the railroad removed the case to the United States District Court. The United States District Court, considering itself bound by the state law, held that the six-year statute and not the three-year statute was applicable, but on this point the Circuit Court of Appeals reversed, declining to follow the Mississippi Supreme Court decision. Certiorari was granted.

This presented to the United States Supreme Court the clear question of whether or not in an action of this type the federal courts are required to apply the state law. In holding that they were, this Court said:

> "* * * But for failure to follow the state law on the state statute of limitations, the judgment of the Circuit Court of Appeals is reversed."

The next United States Supreme Court decision to touch directly on this question was the case of *Slocum* v. *Delaware, Lackawanna & Western R. Co.*, 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577, decided on April 10, 1950. This case involved a controversy between two unions and a

railroad as to which union should be assigned certain work. Instead of invoking the jurisdiction of the Adjustment Board, the railroad filed suit for a declaratory judgment in the New York State Court naming both unions as defendants, and asking for an interpretation of the union contracts.

In holding that the Railway Adjustment Board had exclusive jurisdiction of such a controversy, this Court clearly distinguished between suits involving the application of union contracts to presently employed personnel and a common law action for breach of contract, such as was involved in *Moore* v. *Illinois Cent. R. Co., supra.* This Court said:

> "Our holding here is not inconsistent with our holding in *Moore* v. *Illinois Cent. R. Co.*, 312 U. S. 630, 85 L. Ed. 1089, 61 S. Ct. 754. Moore was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. *As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the Railroad and its other employees.*" (Emphasis added).

If there was any doubt after the *Slocum* decision, *supra,* as to the nature of this type of law suit and the applicable law in cases such as these, all such doubt was fully dispelled by the decision of this Court in *Transcontinental & Western Air, Inc.*, v. *Koppal*, 345 U. S. 653, 97 L. Ed. 1325, 73 S. Ct. 906, decided on June 1, 1953. There an employee of T. W. A. was discharged and he, as did the petitioner

herein, chose to abandon his right to appeal to the Railway Adjustment Board and brought suit in a court of general jurisdiction to enforce his common law right of action on his contract. He chose to file in the U. S. District Court which he could do because of diversity and amount involved. His contract of employment was a Missouri contract, and if the law of Missouri was to be applied, he was barred from bringing his action until after he had exhausted the administrative remedies provided by the contract. This he had not done, and the trial court very properly dismissed his petition for the reason that the bringing of the suit was barred by the applicable law of Missouri.

The trial court was reversed by the Circuit Court of Appeals and this Court granted certiorari on questions 1 and 2 presented by the petition for the writ, viz.:

> "1. Whether in a diversity action for wrongful discharge by an employee against a carrier subject to the provisions of the Railway Labor Act, the Act precludes the application by the District Court of state law, otherwise controlling, governing the right to bring the action.
>
> "2. Whether the decisions of this Court in *Moore* v. *Illinois Central R. Co.* 312 U. S. 630, and *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, bar the application of state law requiring an employee to attempt to adjust his dispute with his employer before he may seek redress in state courts for alleged breach of a collective bargaining agreement made pursuant to the Railway Labor Act." (*Transcontinental and Western Air, Inc.*, v. *Koppal*, 344 U. S. 933, 97 L. Ed. 718, 73 S. Ct. 504).

We submit that the first question above set out presents the identical question now before this Court.

In ruling the *Koppal* case, this Court again set out the issues in the following language:

> "The case presents two questions: (1) whether a discharged employee of a carrier that is subject to the Railway Labor Act is precluded by that Act from resorting to a *state-recognized cause of action for wrongful discharge* and, if not (2) whether in such action, he must show that he has exhausted his administrative remedies, under his contract of employment. For the reasons hereafter stated, our answer to the first question is no and to the second, yes, provided the applicable state law so requires." (Emphasis added).

After determining that the applicable law of Missouri requires a litigant to exhaust all administrative remedies provided in a contract before bringing suit for its breach, this Court held that the law of Missouri barred the action and that the petition was therefore properly dismissed —in other words that actions of this type for breach of contract could only be brought if the state law permitted. In so holding, this Court said:

> "The result is that, whereas, under the Railway Labor Act, the Adjustment Board has exclusive jurisdiction to adjust grievances and jurisdictional disputes of the type involved in the *Slocum* case, that Board does not have like exclusive jurisdiction over the claim of an employee that he has been unlawfully discharged. Such employee may proceed either in accordance with the administrative procedures prescribed in his employment contract *or he may resort to his action at law for alleged unlawful discharge if the state courts recognize such a claim.* Where the applicable law permits his recovery of damages without showing his prior exhaustion of his administrative remedies, he may so recover, as he did in the *Moore* litigation, *supra*, under Mississippi law.

> "On the other hand, if the applicable local law, as in Missouri, requires an employee to exhaust his administrative remedies under his employment contract in order to sustain his cause of action, he must show that he has done so. Here respondent was employed by a carrier, subject to Title II of the Railway Labor Act, and his employment contract contained many administrative steps for his relief, all of which were consistent with that Act. *Accordingly, while he was free to resort to the courts for relief, he was there required by the law of Missouri to show that he had exhausted the very administrative procedure contemplated by the Railway Labor Act. In the instant case, he was not able to do so and his complaint was properly dismissed.*" (Emphasis ours).

The principles of this decision, if applied to the case at bar, mean that petitioner can recover on his action for breach of contract in the state court if, but only if, the state law of Arkansas permits. Since the state law of Arkansas does not so permit, it naturally follows that petitioner cannot recover.

A case identical with the case at bar in every way was presented to this Court by an application for writ of certiorari seeking a review of the decision of the Supreme Court of Arkansas in the case of *Petty* v. *Missouri and A. Ry. Co.*, 205 Ark. 990, 167 S. W. 2d 895, certiorari denied 320 U. S. 738, 88 L. Ed. 437, 64 S. Ct. 37. The *Petty* case is virtually identical to the case at bar. Mr. Petty was employed by a railroad in Arkansas and was discharged in Arkansas. He, too, abandoned his remedy under Railway Labor Act and filed suit in a state court alleging a breach of contract. He, too, worked under the provisions of a union contract, the terms of which are quite similar to those of the contract here at issue. Mr. Petty's union contract also provided that he should not be discharged with-

out cause and provided an administrative remedy for determining whether or not there was sufficient cause. The trial court of Arkansas dismissed the petition, relying on *St. Louis, I. M. & S. Ry. Co.* v. *Matthews,* 64 Ark. 398, 42 S. W. 902, which held that while the railroad, under the terms of such a contract agreed not to discharge the employee, the employee made no agreement to work for any definite period of time, and that for this reason the contract, insofar as it applied to discharge, was void for lack of mutuality. On appeal to the Supreme Court of Arkansas, that court affirmed the action of the trial court after fully considering the question of what effect, if any, the Railway Labor Act might have on the employee's rights.

This case presented every point that is at issue in the present case, including the issue of whether a federal question was involved. A discharged employee was suing in a state court asking damages for an alleged unlawful discharge in violation of the provisions of a remarkably similar union contract entered into pursuant to the Railway Labor Act. If the state law of Arkansas was to be applied in determining his rights, he had no cause of action. On certiorari, the employee claimed and respondent denied that the employee was given a federal right by reason of the Railway Labor Act. It is, therefore, apparent that the *Petty* case presented to this court every question that is presented by the case at bar and certiorari was denied. See 320 U. S. 738, 88 L. Ed. 437, 64 S. Ct. 37.

The lower Federal courts have uniformly held that actions for breach of collective bargaining agreements made under the Railway Labor Act do not present any federal question for jurisdictional purposes. In *Barnhart* v. *Western Maryland Railway Co.,* 128 F. 2d 709, the Fourth Circuit Court of Appeals said:

> " 'In other words, the employment may have been inspired by the Act, but a right of action for the defendant's alleged breach of the contract does not arise from the Act; but only from the subsequent contractual relations of the parties. The wrongful breach of such relations does not confer Federal jurisdiction unless there is diverse citizenship.' "

In *Hayes* v. *Union Pac. R. Co.*, 184 F. 2d 337, the Circuit Court of Appeals for the Ninth Circuit said:

> "Congress did not, by the Railway Labor Act, grant jurisdiction to the Federal Courts to afford relief for breaches of performance of collective bargaining agreements * * *. It is only when collective bargaining agreements are unlawfully entered into or when the agreements themselves are unlawful in terms or effect, that federal courts may act."

In both the *Barnhart* and *Hayes* cases this Court denied certiorari (*Barnhart* v. *Western Maryland Railway Co.*, 317 U. S. 671, 87 L. Ed. 538, 63 S. Ct. 75; *Hayes* v. *Union Pacific R. Co.*, 340 U. S. 942, 95 L. Ed. 680, 71 S. Ct. 506.

Of like effect are *Burke* v. *Union Pac. R. Co.*, 129 F. 2d 844, and *Starke* v. *New York, Chicago & St. Louis R. Co.*, 180 F. 2d 569.

The United States District Courts likewise have denied jurisdiction in such cases. Two of the most recent cases are *Brock* v. *Brotherhood of Sleeping Car Porters*, 129 F. Supp. 849 (W. D. La., 1955), and *Airline Dispatch Association* v. *California Eastern Airways*, 127 F. Supp. 521 (N. D. Calif., 1954). In the latter case, the court said at page 524:

> "The complaint here alleges a breach of the [employment] agreement. The employment and the agreement may have been inspired by the Act, but the right of action does not arise from the act but only from the consequent contractual relations of the parties. Such

a breach does not confer jurisdiction upon the Federal Court."

The cases which petitioner cites involve interpretations of different federal statutes differing widely in their text. We do not consider them authority for an interpretation of the Railway Labor Act, and we will not attempt to distinguish them because to do so would make this Brief unduly long. The cases we cite are directly in point.

We respectfully submit that the cases cited show that no federal question is involved.

B. The Railway Labor Act does not create a cause of action on a contract.

The basic error in petitioner's reasoning springs from a misconception of the purpose of the Railway Labor Act. This Act has as its purpose the prompt and orderly settlement of disputes between employees and railroads so as to avoid any interruption to commerce.

The Railway Labor Act does not create any new causes of action. It merely provides a limited and specific remedy for settling causes of action otherwise created. Any contractual grievance which might arise has its source, not in the provisions of the Act, but springs from the personal contractual relations entered into between the parties. These personal contractual relations are not (with certain limited exceptions) provided for in the Act but may be anything the parties agree upon, and may differ widely in different contracts. Having once fixed their personal contractual rights by agreement of the parties, the Act then gives the parties the machinery for settling grievances arising therefrom. That the Act provides only the machinery for settling disputes was recognized by this Court in *Terminal Railroad Association* v. *Brotherhood of*

Railroad Trainmen, 318 U. S. 1, 87 L. Ed. 571, 63 S. Ct. 420, where this Court said:

> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulations of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by these Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce. The Mediation Board and Adjustment Board act to compose differences that threaten continuity of work, not to remove conditions that threaten the health or safety of workers."

However, the parties under the ruling in the *Moore* case, *supra*, are not required to make use of this machinery if they do not so desire. If they abandon the use of such machinery they abandon any rights they might have acquired had they chosen to proceed under the Act and are left in the same position as any other litigants who want to assert or contest the validity of a contract. If a cause of action arising out of their contract exists, they may pursue it. But the question of whether such a cause of action exists is determined by the applicable state law and the provisions of the Railway Labor Act do not add to or detract from that cause of action.

We respectfully submit that no federal question is involved because the Railway Labor Act does not create any federal cause of action on a union contract.

II. All of the Issues Raised by Petitioner Have Already Been Uniformly Settled by Decisions of the Supreme Court of the United States.

We submit that the decision in *T. W. A.* v. *Koppal, supra,* decides every issue raised by petitioner in his application for a writ.

Petitioner himself states (page 32 of application) that, "Under the Koppal case recovery is permitted or denied in accordance with state law." We agree with this statement and believe it is a complete answer to the only issue involved in this case. Petitioner goes on to say (page 32 of application), "It is our contention that the Koppal case is not sound law." With this statement we do not agree. But the statement clearly indicates that it would require an outright reversal of the Koppal opinion to sustain petitioner's contention in his application.

In addition to the *Koppal* case, *supra,* the cases of *Moore* v. *Illinois Cent. R. Co.* and *Slocum* v. *Delaware, Lackawanna & Western Ry. Co., supra,* also decide the issues.

There is no contrariety of opinions. The only contrariety complained of by petitioner is a supposed conflict between the *Moore* case and the *Koppal* case. We respectfully point out that in the Koppal opinion rendered by this Court, the Moore case was fully discussed and carefully distinguished. Petitioner is apparently asking the Court to again take up this same proposition and reverse its ruling.

We respectfully submit that the Koppal opinion fully determines all of the issues raised.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

THOS. T. RAILEY,
HAROLD L. HARVEY,
Missouri Pacific Building,
St. Louis 3, Missouri,

HILARY A. BUSH,
FRED A. MURDOCK,
608 Bryant Building,
Kansas City 6, Missouri,
Attorneys for Respondent.